

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

BILLY HALE, §  
TDCJ-CID NO. 693364, §  
Plaintiff, §  
v. § CIVIL ACTION NO. H-15-0750  
TEXAS DEPARTMENT OF CRIMINAL §  
JUSTICE, *et al.*, §  
Defendants. §

MEMORANDUM ON DISMISSAL

Plaintiff Billy Hale, a state inmate confined in the Texas Department of Criminal Justice - Correctional Institutions Division's (TDCJ-CID) Allred Unit, has filed *pro se* a civil rights complaint challenging his conditions of confinement. (Docket No. 1.) Plaintiff has also filed a Motion to Proceed *In Forma Pauperis* (IFP). (Docket No. 2.) Because Plaintiff is has previously accrued "three-strikes" under 28 U.S.C. § 1915(g) for filing frivolous civil rights cases in the federal courts, his IFP application will be denied and this case dismissed.

BACKGROUND

Plaintiff's Complaint names as defendants TDCJ-CID; Brad Livingston, TDCJ Executive Director; Jack Douglas, TDCJ Offender Grievance Director; Frank Hoke, TDCJ Court Access Director; Shawn Blair, TDCJ Correctional Industries Director; William Stephens,

TDCJ-CID Director; and, Rissie Owens, Director of the Texas Board of Pardons and Paroles. (Docket No. 1 at 5.) The "Statement of Claim" section consists of a string of conclusory statements regarding denial of access to the courts, denial of adequate sleep, deficient work and commissary policies, inadequate medical and education programs, denial of due process by the Board of Pardons and Paroles, and denial of "good-time" and "work-time" credit towards his sentence. (Id. at 6-7.) As relief, Plaintiff seeks an investigation into his allegations and requests that Defendants be "held accountable," Plaintiff also seeks any injunctive, declaratory or monetary relief the Court deems proper. (Id. at 6.)

#### ANALYSIS

Under 28 U.S.C. § 1915(g), a prisoner cannot pursue a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. The only exception to this revocation of an inmate's privilege to proceed *in forma pauperis* is if he is in immediate danger of serious physical harm. Banos v. O'Guin, 144 F.3d 883, 884 (5th Cir. 1998).

Court records show that Plaintiff is subject to the three-strikes provision under § 1915(g) because he previously filed at least three lawsuits or appeals in the federal courts while

incarcerated that were dismissed as frivolous, malicious, or failing to state a claim. See Hale v. Williams, No. 10-10144, (5th Cir. August 3, 2010) ("This dismissal and the dismissal by the district court each count as one strike under 28 U.S.C. § 1915(g)."); Hale v. Williams, No. 7:07-CV-115-O (N.D. Tex.) (dismissed as frivolous January 22, 2010); Hale v. Williams, No. H-95-5021 (S.D. Tex.) (partial dismissal of claims "regarding property, and access to the courts" dismissed on September 26, 1997) (no appeal taken from final judgment entered September 10, 1998).<sup>1</sup> Moreover, Plaintiff's present complaint does not allege any facts showing that Plaintiff is in immediate danger of serious physical harm. Thus, Plaintiff is barred under § 1915(g) from proceeding with the present lawsuit *in forma pauperis*.

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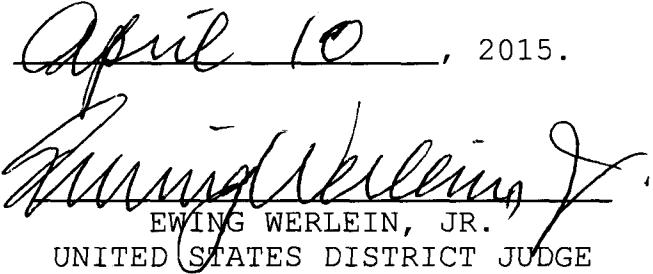
<sup>1</sup> The partial dismissal of civil action H-95-5021 filed in this district counts as a strike under § 1915(g). See Thornton v. Merchant, 526 F. App'x 385, 388 (5th Cir. 2013) (partial dismissal of complaint as frivolous, malicious, and for failure to state a claim counts as a strike under 28 U.S.C. § 1915(g)).

CONCLUSION

Accordingly, it is ORDERED that Plaintiff's Motion to Proceed *In Forma Pauperis* (Docket No. 2) is DENIED and this case is DISMISSED pursuant to 28 U.S.C. § 1915(g), without prejudice to refileing with payment of the full filing fee. Any other pending motions are further DENIED.

The Clerk will provide a copy of this Order to all parties, to the TDCJ-Office of the General Counsel, P.O. Box 13084, Capitol Station, Austin, TX 78711, Fax 512-936-2159; and to the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas, 75702, Attention: Betty Parker, Three-Strikes List Manager.

SIGNED at Houston, Texas, on April 10, 2015.

  
Ewing Werlein, Jr.  
UNITED STATES DISTRICT JUDGE